Hovsepian v. Apple, Inc.

Doc. 74 Att. 2

EXHIBIT 3

Dockets.Justia.com

HENNIGAN, BENNETT & DORMAN LLP
RODERICK G. DORMAN (SBN 96908)
ALAN P. BLOCK (SBN 143783)
KEVIN I. SHENKMAN (SBN 223315)
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Attorneys for Plaintiff
ACACIA MEDIA TECHNOLOGIES CORPORATION

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ACACIA MEDIA TECHNOLOGIES CORPORATION, Plaintiff, vs. NEW DESTINY INTERNET GROUP, et. al., Defendants.	Case No. SACV 02-1040 JW (MLGx) **Consolidated Cases:** SA CV 02-1048-JW (MLGx) SA CV 02-1063-JW (MLGx) SA CV 02-1155-JW (MLGx) SA CV 03-0217-JW (MLGx) SA CV 03-0218-JW (MLGx) SA CV 03-0219-JW (MLGx) SA CV 03-0259-JW (MLGx) SA CV 03-0271-JW (MLGx) SA CV 03-0308-JW (MLGx) **Related Cases:** SA CV 03-1610-JW (MLGX) SA CV 03-1800-JW (MLGX) SA CV 03-1801-JW (MLGX) SA CV 03-1803-JW (MLGX) SA CV 03-1804-JW (MLGX) SA CV 03-1805-JW (MLGX) SA CV 03-1807-JW (MLGX) **PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S CLAIM CONSTRUCTION BRIEF RE: CLAIM TERMS IN THE '702 PATENT**
AND ALL RELATED CASE ACTIONS.	**DATE:** **May 19, 2004** **TIME:** **9:00 a.m.** **CTRM:** **Hon. James Ware**

HENNIGAN, BENNETT & DORMAN LLP
LAWYERS
LOS ANGELES, CALIFORNIA

the rules of a code; or (4) capable of representing data in symbolic form using a code or a coded character set such that reconversion to the original form is possible.

As there are multiple definitions for "encode" (and therefore multiple definitions for "encoder"), the Court must identify which of the possible dictionary definitions is most consistent with the use by the inventors -- if more than one meaning is consistent with the use by the inventors, then the claim term may be construed to encompass all such consistent meanings. Texas Digital, 308 F.3d at 1203.

The specification of the '702 patent is consistent with and reinforces the definition of encoder using the definition of encode -- "to express a single character or a message in terms of a code." The specification defines the "identification encoder" as an encoder which gives [or assigns] a unique identification code to an item. ('702 patent, 6:31-35: "Prior to being made accessible to a user of the transmission and receiving system of the present invention, the item must be . . . given a unique identification code by identification encoder 112."; See also, 6:52-54; 6:57-58; 10:9-11; 18:11-15).[11] Thus, the "identification encoder" expresses a message -- the unique identification code.

Therefore the "identification encoder" is construed as "a device or software capable of expressing the identification of an item in terms of a code."

G. "Transceiver"

The term "transceiver" is found in claims 1, 17, and 27 of the '702 patent. A transceiver is a device that is capable of both transmitting and receiving data.

The term "transceiver" is defined essentially the same way in at least four different dictionaries:

---

[11] The specification further defines the identification encoder to optionally log details about the item (program notes) and assign the item a popularity code. ('702 patent, 6:34-39; 10:45-46; 12:4-5). As part of these optional features, the identification encoder may also map item addresses to item names and may operate a program which updates a master item database containing facts regarding items in the compressed data library. ('702 patent, 10:52-58).

DENNEMAN, BENNETT & DORMAN LLP LAWYERS LOS ANGELES, CALIFORNIA

1. "A terminal device that can both transmit and receive signals." (Computer Dictionary and Handbook, Sippl and Sippl, 3rd Ed. 1980 at 594) (Exhibit 16 to Block Decl.);

2. "A terminal device that can both transmit and receive signals." (Dictionary of Information Technology, 2nd Ed. 1986, p. 341) (Exhibit 17 to Block Decl.);

3. "*Acronym for* transmitter and receiver. A device that can both transmit and receive signals on a communication medium." (Dictionary of Computing, 3rd Ed. 1990, p. 474) (Exhibit 18 to Block Decl.); and

4. "A device that both transmits and receives data." ("The IEEE Standard Dictionary of Electrical and Electronics Terms, 6th Ed. 1996, p. 1128) (Exhibit 19 to Block Decl.)

The specification of the '702 patent is consistent with and reinforces this definition. The transceiver 201 for the reception system is shown in Figure 6 of the '702 patent. The '702 patent states that the transceiver 201 of the reception system "automatically receives the information from the transmitter 122 as compressed data blocks." ('702 patent, 17:25-27).

Transceivers are also shown in the transmission system in Figure 2b of the '702 patent Figure 6 shows transceivers, which both transmit and receive information (note the arrows both to and from the transceivers). These transceivers are shown in Figure 2b as operating on communication channels, such as ISDN, B-ISDN, LAN [local are network] or MAN [metropolitan area network], and telephone.

One district court has construed the term "transceiver" in a patent claim consistent with the construction offered here by Acacia. In Inline Connection Corp. v. AOL Time Warner, Inc., 302 F. Supp. 2d 307, 324-325 (D. Del. 2004), the court held that the defendants failed to overcome the heavy presumption that the term transceiver should not carry its ordinary meaning. Id. The court therefore construed "transceiver" to mean "a device capable of both sending and receiving information."

DENNEMAN, BENNETT & DORMAN LLP
LAWYERS
LOS ANGELES, CALIFORNIA

Id. The court obtained this ordinary meaning from the Dictionary of Computing (3rd ed. 1991, p. 474) (Exhibit 18 to Block Decl.), cited by Acacia above. Inline Connection, 302 F. Supp. 2d at 325 n 79.

Thus, the term "transceiver" is construed to mean "a device that is capable of both transmitting and receiving data."

H. "Wherein Said Identification Encoder Allows Entry Of A Popularity Code"

The phrase "wherein said identification encoder allows entry of a popularity code" is found in claims 6 and 27 of the '702 patent.

The term "popularity" means: "the quality or state of being popular." (Webster's, at 915; Exhibit 12 to Block Decl.) The term "popular" means: "frequently encountered or widely accepted; commonly liked or approved." (Webster's, at 915; Exhibit 12 to Block Decl.) The term "code" means: "a system symbols (as letters, numbers, or words) used to represent assigned and often secret meanings." (Webster's, at 255; Exhibit 12 to Block Decl.)

Thus, a popularity code is the symbols, letters, or words or combinations thereof used to represent the popularity of a particular item.

This meaning is consistent with and reinforced by the specification of the '702 patent. The '702 patent states that the identification encoder may also allow entry of a popularity code for an item: "The storage encoding process performed by identification encoder 112 also allows entry of a popularity code." ('702 patent, 12:4-5). The '702 patent further states that the popularity code is assigned on the basis on how often the item is expected to be requested for transmission: "The popularity code is preferably assigned on the basis of how often the corresponding item is expected to be requested from the compressed data library 118." ('702 patent, 12:5-8). Further, the popularity code may be updated, to take into account how often an item is actually transmitted: "Once assigned, the popularity code may be dynamically updated, by factoring item usage against system usage." ('702 patent, 12:13-14).

HENNIGAN, BENNETT & DORMAN LLP
RODERICK G. DORMAN (SBN 96908)
ALAN P. BLOCK (SBN 143783)
KEVIN I. SHENKMAN (SBN 223315)
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Attorneys for Plaintiff
ACACIA MEDIA TECHNOLOGIES CORPORATION

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ACACIA MEDIA TECHNOLOGIES CORPORATION, Plaintiff, vs. NEW DESTINY INTERNET GROUP, et. al., Defendants.	Case No. SACV 02-1040 JW (MLGx) **Consolidated Cases:** SA CV 02-1048-JW (MLGx) SA CV 02-1063-JW (MLGx) SA CV 02-1165-JW (MLGx) SA CV 03-0217-JW (MLGx) SA CV 03-0218-JW (MLGx) SA CV 03-0219-JW (MLGx) SA CV 03-0259-JW (MLGx) SA CV 03-0271-JW (MLGx) SA CV 03-0308-JW (MLGx) **Related Cases:** SA CV 03-1610-JW (MLGX) SA CV 03-1800-JW (MLGX) SA CV 03-1801-JW (MLGX) SA CV 03-1803-JW (MLGX) SA CV 03-1804-JW (MLGX) SA CV 03-1805-JW (MLGX) SA CV 03-1807-JW (MLGX) **PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S OPPOSITION TO DEFENDANTS' CLAIM CONSTRUCTION BRIEF RE: CLAIM TERMS IN THE '702 PATENT** **DATE: May 19, 2004** **TIME: 9:00 a.m.** **CTRM: Hon. James Ware**
AND ALL RELATED CASE ACTIONS.	

Defendants contend that, because claims 1 and 17 do not define the function performed by the "sequence encoder," the claims are indefinite. A system claim, such as claims 1 and 17, recites a series of elements. There is no requirement that the claim recite a function for each of the elements. Although it is their burden to do so, defendants have not shown how one of skill in the art would understand the scope of this claim when read in light of the specification.

Although the term "sequence encoder" is not used in the specification of the '702 patent, when this term is read in light of the specification of the '702 patent, it is clear that persons of skill in the art would understand that the "sequence encoder" refers to the time encoder. The time encoder functions to place blocks of converted formatted information from converter 113 into a group or sequence of addressable data blocks by assigning relative time markers to data prior to subsequent compression. ('702 patent, 7:57-59; 8:6-9; 8:46-49; Fig. 2a). Defendants admit that the time encoder disclosed in the specification is sufficient structure. (Defendants' Opening Brief, at 29:18-19).

Thus, the "sequence encoder" term of claims 1 and 17 of the '702 patent is sufficiently definite. As discussed in Acacia's Opening Brief, the term "sequence encoder" is limited by the specification to "a time encoder, i.e., a device or software which places blocks of converted formatted information into a sequence or group of addressable data blocks by assigning relative time markers to data prior to subsequent compression."

C. Defendants' Proposed Construction Of "Transceiver" Is Erroneous, Because It Relies On Dictionary Definitions That Are Inconsistent With And Not Supported By The Specification

Defendants' proposed construction for "transceiver" is erroneous, because it is inconsistent with the use of the word "transceiver" by the inventors. Defendants contend that the claim term "transceiver" is limited to "radio" transmitting and receiving equipment in a "common housing" or "single housing" for "portable or mobile use" employing "common circuit components" for both transmitting and receiving. (Defendants' Brief at 27, 19-26).

Defendants' proposed construction is erroneous because it wrongly includes the limitations of "radio," "common or single housing," "portable or mobile use," and "common circuit components." These are extraneous limitations which are inconsistent with the specification of the '702 patent. These limitations are also not found in the many other relevant dictionary definitions for "transceiver." Acacia's four dictionaries define "transceiver" as "a device capable of both sending and receiving data."[13] (Acacia's Opening Brief at 26:1-12). There is no evidence in the patent documents that the inventors meant to limit the term "transceiver" or to deviate from the ordinary meanings given in these dictionaries.

Defendants support their erroneous construction with the Fifth Edition of the IEEE Dictionary and Webster's. The fact that these dictionary definitions can be found by defendants does not mean that this is the ordinary meaning of the term "transceiver" which the Court must accept. As with every dictionary definition, the Court must always consult the specification to determine whether the dictionary definition is consistent with the inventors' use of the term in the patent. Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc., 334 F.3d 1294, 1300 (Fed. Cir. 2003) ("In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.")

---

[13] Defendants rely on the Fifth Edition of the IEEE Dictionary, whereas Acacia relies on the Sixth Edition of the IEEE Dictionary. The Fifth Edition was published in 1993; the Sixth Edition was published in 1996. Both are relevant to determining the meaning of terms in the '702 patent. The '702 patent was issued in 2000. The Federal Circuit has held that dictionary definitions which are publicly available when the patent issued are objective resources which may be consulted by the Court. Texas Digital, 308 F.3d at 1202 ("Dictionaries, encyclopedias and treatises, publicly available at the time the patent issued, are objective resources that serve a reliable sources of information on the established meanings that would have been attributed to the terms of claims by those of skill in the art.").

The Court cannot give a term an ordinary meaning using a definition which contradicts or is inconsistent with the words used by the inventors. See, e.g., CCS Fitness, 288 F.3d at 1366; Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1584 n 6 (Fed. Cir. 1996); Texas Digital, 308 F.3d at 1204. If more than one dictionary definition is consistent with the use by the inventor, then the Court shall construe the term to encompass all such consistent meanings. Texas Digital, 308 F.3d at 1204; Rexnord, 274 F.3d at 1343.

Defendants pay lip service to the specification of the '702 patent in looking for consistency with their dictionary definitions. Defendants do nothing more than state the conclusion that their definitions are "consistent" with the patent's use of transceiver and the use of the term in the prosecution history. (Defendants' Opening Brief at 27:26-28). Defendants do not cite to any portion of the specification or prosecution history which they believe to be consistent with their dictionary definitions. They cannot do so, because there is no portion of the specification or file history that is consistent with defendants' dictionary definitions.

Nothing in the specification of the '702 patent or prosecution history states that the transceiver transmits or receives only radio signals. (Acacia's Opening Brief at 26:13-22)[14]. Rather, the specification shows and describes transceivers which transmit and receive signals via a telephone, ISDN, B-ISDN, microwave, DBS (direct broadcast satellite), cable television, MAN (metropolitan area networks), LAN (local area networks), and broadcast. ('702 patent, 4:59-61; 15:29-40; Figure 1g, 2b, and 6). The construction of "transceiver" therefore cannot be limited to radio signals.

Nothing in the specification or prosecution history states that the transceiver must be in a common or single housing. Figure 6 of the '702 patent shows the receiving function of transceiver occurring in one housing (201) and the transmitting function of the transceiver occurring in another housing (207). The construction of "transceiver" therefore cannot be limited to a common or single housing.

---

[14] There is a typographical error at line 19 on page 26 of Acacia's brief. The reference should be to Figure 2b of the '702 patent, not Figure 6.

Nothing in the specification or prosecution history states that the transceiver is only for portable or mobile use. The construction of "transceiver" therefore cannot be limited to portable or mobile use.

Nothing in the specification or prosecution history states that the transceiver must employ common circuit components for both transmitting and receiving. Again, Figure 6 of the '702 patent shows the receiving function of the transceiver performed by one set of components (201) and the transmitting function performed by another set of components (207). The construction of "transceiver" therefore cannot be limited to employing common circuit components.

Nothing in the specification or prosecution history states that the transceiver must be "portable or mobile." Whether the transceiver is fixed or is portable or mobile is not discussed in the specification or file history of the '702 patent. This is so, because the inventors intended to cover all types of transceivers, whether fixed, portable, or mobile.

Acacia's construction for transceiver—a device capable of both transmitting and receiving data—is supported by four dictionary definitions and was adopted by the court as the ordinary meaning for transceiver in Inline Connection Corp. v. AOL Time Warner, Inc., 302 F. Supp. 2d 307, 324-25 and n 79 (D. Del. 2004). Acacia's construction is correct, because it is consistent with the specification of the '702 patent. The specification and Figures of the '702 patent show devices which are capable of both transmitting and receiving data, but do not only transmit and receive radio signals, do not need to be housed in a single or common housing, do not need to be portable or mobile, and do not need to utilize common circuitry. The Court should not construe transceiver to add these entirely extraneous and unsupported limitations.

The Court should therefore adopt Acacia's construction for the term "transceiver": "a device that is capable of both transmitting and receiving data."